

FEDERAL WORKING GROUP

PROPOSED FRAMEWORK

FOR ESTABLISHING THE MISSOURI RIVER
RECOVERY IMPLEMENTATION COMMITTEE

THE JOURNEY TOWARDS COLLABORATION

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FOR THE ESTABLISHMENT OF THE MISSOURI RIVER RECOVERY IMPLEMENTATION COMMITTEE

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PROPOSED FRAMEWORK

FOR THE ESTABLISHMENT OF THE MISSOURI RIVER RECOVERY IMPLEMENTATION COMMITTEE

EXECUTIVE SUMMARY

Recovery of the federally protected species in the Missouri River basin and the ecosystem upon which they depend will require many actions. A broad, unified, and transparent process that includes the full spectrum of basin tribes, stakeholders, governmental agencies and non-governmental organizations is necessary to orchestrate that recovery. Significant stakeholder involvement in recovery efforts in the Missouri River basin has been recommended by many studies. The federal agencies with programs that affect the Missouri River have formed a Federal Working Group (FWG) to explore the available options and guide the establishment of a recovery implementation committee. The FWG is presenting this ***Proposed Framework for the Establishment of a Missouri River Recovery Implementation Committee*** for the purpose of generating discussion, and is seeking feedback on the proposals included in this document. The successful establishment and productive operation of the Missouri River Recovery Implementation Committee (MRRIC) cannot happen without the willingness of the varied basin interests to work together toward a shared vision for the future of the Missouri River.

The FWG envisions a Missouri River basin working together, increasingly learning how to effectively reestablish a healthy, self-sustaining Missouri River ecosystem, while continuing to meet the multiple needs of society. The MRRIC is viewed by the FWG as providing an essential collaborative forum for the basin to come together and participate in developing a shared vision and comprehensive plan for Missouri River recovery and to help guide the recovery actions.

Formation of the MRRIC under the Secretary of the Interior's authority provided in the Endangered Species Act (ESA) to appoint recovery implementation committees that are not subject to the Federal Advisory Committee Act (FACA) is recommended by the FWG. As a recovery implementation committee, the focus of the MRRIC will be on issues and activities associated with recovery of federally listed Missouri River threatened and endangered species and the ecosystem on which they depend.

The MRRIC will provide recommendations to governmental and non-governmental entities for the purposes of implementing and integrating Missouri River recovery actions. While the MRRIC recommendations will be advisory, the federal agencies have committed to fully considering those recommendations. If recommendations of the MRRIC are not implemented, the reasons will be explained.

A three-phased approach to convening the MRRIC is proposed. The initial phase consists of the drafting of this **Proposed Framework** by the FWG, review and consideration of this document through tribal and public meetings, receipt and incorporation of comments, and preparation of a **Final Framework** document. The draft **Proposed Framework** is envisioned as a “starting point” from which the **Final Framework** will emerge through tribal and public participation. The first phase is anticipated to be completed in mid-November of 2006. As proposed in this document, the second phase will be the convening of the MRRIC Planning Committee and its development of the Initial Charter for the formal MRRIC. The second phase is anticipated to begin in January or early February of 2007. The third phase will be the convening of the formal MRRIC, anticipated in late fall of 2007.

The purpose of the MRRIC Planning Committee is to develop an Initial Charter for the formal MRRIC as efficiently and expediently as possible. The total size of the Planning Committee, including a Chair, is proposed to be approximately 40. The participating sovereign governmental entities are proposed as *ex-officio* members of the Planning Committee, including federal, tribal, state, and local governmental representatives. Non-governmental members of the Planning Committee will be representative of all major interests in the basin. The Planning Committee will be impartially chaired by a selected individual who is familiar with the issues in the basin but who has no personal stake in the outcome. To ensure the quality of the process, the selection of individuals on the Planning Committee will be crucial. The FWG has proposed a selection process for Planning Committee members.

Operating protocols and ground rules have been proposed to establish a common set of expectations and mutual agreement about the purpose of the Planning Committee, as well as to help ensure efficient use of participants’ time. A draft of the Initial Charter will be reviewed by interested parties in the basin before the Planning Committee makes its final recommendations. Activities that do not further the central goal of developing the Initial Charter will not be pursued by the Planning Committee. Recovery actions in the basin will continue while the Planning Committee is developing the Initial Charter. Federal agencies in the basin will continue to provide opportunities for public comment on their activities.

The FWG encourages the reviewers of this document to provide comments at any of the upcoming tribal or public meetings, send e-mail comments, or fax comments prior to the deadline of October 27, 2006.

A. INTRODUCTION

1. Purpose of the Proposed Framework Document – Recovery of the federally protected species and the ecosystem upon which they depend will require many actions. A broad, unified, and transparent process that includes the full spectrum of basin tribes, stakeholders, governmental agencies, and non-governmental organizations is necessary to orchestrate that recovery. The federal agencies with programs that affect the Missouri River have formed a Federal Working Group (FWG) to explore the available options and guide the genesis of a recovery implementation committee. The FWG has put forward this ***Proposed Framework for the Establishment of the Missouri River Recovery Implementation Committee*** document for the purpose of generating discussion within the basin and with the intent of receiving and incorporating basin-wide feedback. Please note that the proposals contained in this document are just that, proposals. The FWG encourages the reviewers of this document to provide comments at any of the upcoming tribal or public meetings, send e-mail comments to Missouri.Water.Management@nwd02.usace.army.mil, or fax comments to 402-697-2504, prior to the deadline of October 27, 2006.

The successful establishment and productive operation of the Missouri River Recovery Implementation Committee (MRRIC) is dependant upon the willingness of the varied basin interests to work together toward a shared vision for the future of the Missouri River. The MRRIC participants must be willing to coalesce, regardless of their long-standing differences, and engage in good-faith discussions on recovery issues.

How you can participate

attend a tribal or public meeting in your area

Submit your comments via

e-mail to Missouri.Water.Management@nwd02.usace.army.mil

fax to 402-697-2504

2. Federal Advisory Committee Act – In 1972, the Federal Advisory Committee Act (FACA) (Public Law 92-463, 5 U.S.C., App) was enacted by Congress. Its purpose is to ensure that advice rendered to the executive branch by the various advisory committees, task forces, boards, and commissions formed over the years by Congress and the president, be both objective and accessible to the public. In addition, Congress was concerned that there were too many advisory committees and some were duplicative or not productive. FACA was intended, in part, to discourage the unnecessary proliferation of advisory committees. Any federal agency that intends to establish an advisory group having at least one member who is not a federal employee must comply with FACA.

a. Requirements of FACA – To be chartered under FACA, committees must be “established” under the authority of federal laws, by an executive agency, or by the president. All meetings must take place in the presence of a government official in a government building. The dissolution of committees is also at the federal agency’s discretion. The central tenets of FACA require that federal advisory committees:

- Establish a written charter that explains the mission of the committee
- Give timely notice of committee meetings in the Federal Register
- Have fair and balanced membership on the committee
- Open committee meetings to the public, whenever possible
- Have the sponsoring agency prepare minutes of committee meetings
- Provide public access to the information used by the committee
- Grant to the federal government the authority to convene and adjourn meetings
- Terminate within two years unless the committee charter is renewed or otherwise provided for by statute.

b. Exemption to FACA under ESA – The FWG has recommended the MRRIC be formed under the Secretary of the Interior’s authority provided by the Endangered Species Act (ESA) to appoint recovery implementation committees. Subsection 4(d) of the ESA provides that the Secretary of the Interior, in developing and implementing recovery plans, may use the services of appropriate public and private agencies and institutions and other qualified persons. The act further provides that committees set up pursuant to this authority are not subject to FACA. Because the primary emphasis of the MRRIC will be to recover the listed species and the ecosystem upon which they depend, the FWG believes that the appointment of the MRRIC will be an appropriate use of the Department of the Interior’s authority under subsection 4(a) of the ESA.

B. BACKGROUND

1. The Missouri River Basin – The Missouri River is the United States’ longest river, extending 2,619 miles from its source in Montana to its confluence with the Mississippi River at St. Louis, Missouri (see Figure 1).

Over 200 years ago, Lewis and Clark led their expedition upstream from the river’s mouth to the Three Forks of the Missouri in the Rocky Mountains. Since that time, humans have significantly modified the river’s channel, floodplain, and ecosystem in response to the demands of basin inhabitants. These changes have reduced the natural habitat and the abundance of native species. As social values have shifted over the years, the emerging consciousness of the value of a healthy ecosystem has focused the basin’s attention on restoration of the Missouri River.

When the dams and reservoirs were constructed, it was felt that these structures were changing the river system for the benefit of society. Menacing floods would be reduced or eliminated, navigation would be enhanced, irrigation waters would be stored, and hydroelectricity would be produced ... But over time, scientific understanding of the ecosystem and the impacts of human actions on the environment ... have broadened and become more sophisticated. Social preferences have shifted greatly in the Missouri River basin over the past fifty years.

The Missouri River Ecosystem, pages 132 – 133

The Missouri River provides habitat for a wide variety of wildlife species, including species that are provided protection under the ESA. Under the ESA, all federal agencies have a responsibility to ensure that their actions are not likely to jeopardize the continued existence of these species or impact their critical habitat. Additionally, federal agencies have an affirmative responsibility to utilize their authorities to carry out programs for the conservation of threatened and endangered species.

2. Missouri River Basin Native American Indian Tribes – Twenty-eight Native American Indian tribes are located within the Missouri River basin (see Figure 2). Thirteen tribal reservations or tribal lands are located directly on the reservoirs, the reaches between the dams, and along the lower river. Native American Indian tribes have a unique relationship with the federal government. The tribes are considered “dependent sovereign nations” and have a government-to-government relationship with the federal agencies. The federal agencies also have a “trust” responsibility to protect tribal resources.

3. Corps of Engineers Projects

a. Mainstem Reservoir System and Bank Stabilization and Navigation Project – The Missouri River Mainstem Reservoir System (System) is the largest reservoir system in the nation and consists of six dams and reservoirs located in Montana, North Dakota, South Dakota, and Nebraska. The six reservoir projects were authorized by the Rivers and Harbors Act of 1935 and the Flood Control Act of 1944 to be regulated as an integrated system providing for flood control, navigation, irrigation, hydropower, water supply, water quality, recreation, and fish and wildlife. The U.S. Army Corps of Engineers (Corps) operates the System to serve all of the Congressionally authorized purposes. Water is stored in and released from the System to serve the authorized purposes. Water is released from the lowest dam in the System, Gavins Point Dam, to serve project purposes along the lower river, which includes the Congressionally authorized Bank Stabilization and Navigation Project (BSNP) from Sioux City, Iowa, to St. Louis, Missouri.

**MAINSTEM RESERVOIR SYSTEM
AUTHORIZED PROJECT PURPOSES**

flood control navigation irrigation hydropower
water supply water quality recreation fish & wildlife

The Missouri River Master Water Control Manual (Master Manual) presents the Water Control Plan (WCP) and operational objectives for the integrated regulation of the Mainstem Reservoir System (System). First published in 1960 and subsequently revised during the 1970s for flood control criteria changes, the Master Manual was revised again in March 2004 to include more stringent drought conservation measures.

During the course of the Master Manual Review and Update, the Corps and the U.S. Fish and Wildlife Service (USFWS) entered into consultation under Section 7 of the ESA regarding the Corps' operation and maintenance of the System, the BSNP, and Kansas River projects. The USFWS provided the Corps with a Final Biological Opinion (BiOp) in 2000 and an Amended BiOp in 2003. The 2003 Amended BiOp required the Corps to implement a bimodal spring pulse release from Gavins Point Dam by 2006. The Master Manual was further revised on February 28, 2006, to incorporate technical criteria for a bimodal spring pulse release. The Master Manual is available on the Corps' website at www.nwd-mr.usace.army.mil/rcc/index.html. The concept of the MRRIC was discussed during the course of consultation between the Corps and USFWS. In its 2004 Record of Decision for the revised Master Manual, the Corps committed to establishing the MRRIC.

b. Other Corps Projects – In addition to the Corps' Mainstem Reservoir Projects, Congress has also authorized the Corps to construct and operate numerous tributary reservoirs, and flood control and bank stabilization projects. The Corps also serves a regulatory role in wetland protection.

4. Other Federal Responsibilities in the Basin Include:

a. Bureau of Reclamation – The Bureau of Reclamation (Reclamation), www.usbr.gov, is actively involved in managing water resources in the Missouri River Basin. Reclamation has constructed over 40 separate water development projects in the basin (see Figure 3). These projects consist of 55 single and multipurpose dams and reservoirs managed to provide for irrigation, municipal and industrial water supply, power generation, flood control, recreation, and fish and wildlife benefits. Combined, these projects deliver irrigation water to 2.3 million acres of land, provide municipal water to over 40 communities, and have a total generating capacity of 720,000 kilowatts. The 18 power plants generate over three billion kilowatt hours of electricity each year, enough to meet the

power needs of about a quarter million homes. Reclamation also works closely with other water management entities in the basin to carefully coordinate overall basin operations and to assist with future development. As a result of the Pick-Sloan Missouri River Program, Reclamation and the Corps jointly manage their projects to ensure the greatest benefit to the Missouri River Basin from an extensive system of dams and reservoirs.

b. National Park Service – Five units of the National Park System are located on the Missouri River and are managed by the National Park Service (NPS), www.nps.gov, including two segments of the river which are also included in the National Wild and Scenic Rivers System. These two segments comprise the Missouri National Recreational River (MNRR), and are managed in accordance with the Wild and Scenic Rivers Act. As such, the NPS administers the MNRR in a manner that will preserve its free-flowing condition, and protect and enhance its water quality, natural, cultural and recreational resources. Units included in the National Park System are managed to protect and preserve unimpaired, the natural and cultural resources for present and future generations.

c. Fish and Wildlife Service – The USFWS, www.fws.gov, administers several programs within the Missouri River Basin. A large number of National Wildlife Refuges, including the Big Muddy, Boyer Chute, DeSoto Bend, Karl E. Mundt and Charles M. Russell National Wildlife Refuges along the main stem of the Missouri, are managed for conservation of fish and wildlife resources and for compatible public uses such as hunting, fishing and wildlife-related recreation. The USFWS's Fisheries program includes several major Fish Hatcheries and related offices that rear, maintain stock and monitor multiple fish species in the Missouri River system, including both listed and game species. The USFWS has lead responsibility for administering the ESA, including recovery programs for each of the listed species within the Missouri basin, and consultation with other federal agencies on their actions within the basin that may affect listed species. Several other authorities, including the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Clean Water Act and legislation related to environmental contaminants, direct the USFWS to provide technical assistance and regulatory oversight for many federal and some private actions that affect fish and wildlife resources within the basin.

d. Natural Resources Conservation Service – The U.S. Department of Agriculture's Natural Resources Conservation Service's (NRCS), www.nrcs.usda.gov, natural resources conservation programs help reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters.

e. USGS – The U.S. Geological Survey (USGS), www.usgs.gov, provides research and technical assistance to management agencies.

f. BIA – The Bureau of Indian Affairs (BIA), www.doi.gov/bureau-indian-affairs.html, manages numerous projects associated with the basin tribes, including archeological, paleontological, cultural, transportation, range management, and water resources as well as fire management and law enforcement.

g. EPA – U.S. Environmental Protection Agency (EPA): EPA, state, and tribal agencies administer several federal environmental statutes that are applicable to Missouri River mainstem recovery goals. Major authorities include: (1) The Clean Water Act (CWA), with its broad mandate to restore and maintain the chemical, physical and biological integrity of the nation's waters; (2) The Safe Drinking Water Act (SDWA) was established to protect the quality of drinking water in the U.S. and focuses on surface and underground water sources; (3) The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) provides federal control of pesticide distribution, sale, and use. One aspect of FIFRA having direct application to Missouri River Recovery are pesticide label restrictions for the protection of endangered species www.epa.gov/espp; (4) The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, gives EPA authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment, and; (5) The Resource Conservation and Recovery Act (RCRA) gives EPA the responsibility to control hazardous waste from the time it's created to the time of its disposal. This includes the generation, transportation, treatment, storage, and disposal of hazardous waste.

h. WAPA – The Western Area Power Administration (Western) <http://www.wapa.gov> markets hydropower from Corps and Reclamation dams in the western U.S. Western's Upper Great Plains Region markets federal hydropower in the Missouri River basin and has firm power allocations with approximately 300 customers in the marketing area designated by the Pick-Sloan legislation. These preference customers include municipalities, rural electric cooperatives, federal and state agencies, public utility districts, irrigation districts and Native American Indian tribes.

5. National Research Council Report – In 1999, with sponsorship by the EPA and the Corps, the Water Science and Technology Board of the National Research Council (NRC) formed a committee of experts to help provide a better scientific basis for river management decisions in the Missouri River basin. The committee's task was divided into three objectives:

- Characterize the historical and current ecological status of the Missouri River and floodplain ecosystem.
- Identify and describe the general state of existing scientific information of the Missouri River and floodplain ecosystem.
- Recommend policies and institutional arrangements for improving Missouri River and floodplain ecosystem monitoring and research.

The resultant report, *The Missouri River Ecosystem, Exploring the Prospects for Recovery*, was released in 2002. Among the many recommendations made in the report was a strong recommendation to significantly involve stakeholders in recovery efforts. A set of principles for stakeholder involvement was also included.

Without stakeholder input, there is a high risk of litigation and further gridlock that will limit progress toward improved ecological conditions.

The Missouri River Ecosystem, page 137

6. Situation Assessment – In 2005, Missouri River basin stakeholders enlisted the assistance of the U.S. Institute for Environmental Conflict Resolution¹ (USIECR) and their contractor, CDR Associates², in assessing the basin’s potential for implementing a successful collaboration process for Missouri River recovery. CDR’s report, *Situation Assessment Report on the Feasibility and Convening of a Missouri River Recovery Implementation Committee*, was completed in April 2006.

The *Situation Assessment* concluded that a recovery implementation committee is needed to assist in coordinating recovery actions in the Missouri River basin. The *Situation Assessment* also recommended that key federal agencies take on a strong leadership role in guiding the initial decisions regarding the establishment of the recovery implementation committee. The *Situation Assessment* is available on the USIECR’s website at: <http://missouririver.ecr.gov/>.

A Missouri River Recovery Implementation Committee is needed to coordinate activities and initiatives of diverse parties in the basin, as they develop recommendations on recovery activities for three endangered species.

Situation Assessment, page 7

¹ The U.S. Institute for Environmental Conflict Resolution is an independent federal agency established by Congress in 1998, to provide impartial expertise and assistance to collaborative problem solving efforts involving federal agencies. For additional information, see: www.ecr.gov.

² CDR Associates is an internationally recognized collaborative decision-making and conflict resolution firm based in Boulder, Colorado, www.mediate.org.

C. SOURCE OF THIS DOCUMENT

In response to the *Situation Assessment's* recommendation for federal leadership in the establishment of the MRRIC, the Missouri River Basin Interagency Roundtable (MRBIR) appointed the Federal Working Group (FWG) to guide the establishment of the MRRIC. Key federal offices represented on the FWG are:

- Department of Agriculture – Natural Resources Conservation Service
- Department of Defense – Army Corps of Engineers
- Department of Energy – Western Area Power Administration
- Department of the Interior
 - U.S. Fish and Wildlife Service
 - Bureau of Reclamation
 - U.S. Geological Survey
 - National Park Service
 - Bureau of Indian Affairs
- Environmental Protection Agency

The FWG participants represent the federal agencies with programs that affect the Missouri River. To ensure the success of the FWG's efforts, the assistance of the USIECR was enlisted to provide expert guidance and to act as facilitator. The FWG, working with USIECR, have developed this *Proposed Framework* document.

Federal agencies will ultimately take a significant role in convening MRRIC. Individually or collectively, they will have to make at least some of the initial decisions regarding structural, operational and relational issues to bring the Committee into existence and launch its work.

Situation Assessment, page 82

D. MISSOURI RIVER RECOVERY IMPLEMENTATION COMMITTEE

1. Federal Agencies' 10-Year Vision for the Missouri River Basin – The federal agencies envision a Missouri River basin working together, increasingly learning how to effectively reestablish a healthy, self-sustaining Missouri River ecosystem, while continuing to meet the multiple needs of society. Shared understanding, commitment and responsibility, along with guidance provided by the best scientific thinking, is resulting in clear, measurable progress towards the recovery and de-listing of threatened and endangered species. Communities are reestablishing their cultural and historic connections to the river, and are benefiting from the associated economic revitalization opportunities. Basin residents have renewed hope in the future because they are gaining confidence in their ability to work together to craft balanced solutions to difficult challenges.

2. Proposed Purposes of the MRRIC – The federal agencies view the primary purpose of the MRRIC as providing an essential collaborative forum for the basin to come together and participate in developing a shared vision and comprehensive plan for Missouri River Recovery and then to help guide the prioritization, implementation, monitoring, evaluation, and adaptation of recovery actions.

The federal agencies will encourage the MRRIC to pursue a multi-disciplinary watershed approach to recovery, based on rigorous scientific review applied in the context of an adaptive management strategy – a process of making decisions about what recovery actions to pursue, implementing them, learning from that implementation and then updating scientific understanding and management tools and adjusting recovery action decisions accordingly. To be effective, the federal agencies recognize that the MRRIC must pursue recovery goals while also ensuring that the basin can continue to meet its socioeconomic needs and that any adverse impacts to river users and stakeholders should be minimized to the extent possible.

The federal agencies also see the MRRIC as having an important role in engaging and educating the basin about recovery issues, promoting awareness, and seeking additional broader public input. The MRRIC must operate in a manner that promotes mutual respect and understanding among the MRRIC participants and builds trust over time, while ensuring openness and transparency regarding its deliberations and recommendations to the entities implementing recovery actions.

3. Existing Opportunities and Limitations on the MRRIC – The MRRIC will have to be established within the structure of all current regulations. Existing laws and regulations may provide opportunities or place limitations on the organization, operation, or activities of the MRRIC. Awareness of these existing rules and their potential affects on the MRRIC will be vital.

4. Proposed Focus of the MRRIC – As a recovery implementation committee, the focus of the MRRIC will be on issues and activities associated with recovery of federally listed Missouri River threatened and endangered species and the ecosystem on which they depend. The MRRIC will provide recommendations to governmental (federal, tribal, state, or local) and non-governmental entities for purposes of implementing and integrating Missouri River recovery actions. The MRRIC recommendations will be made after consideration of how those recommendations fit in the context of the overall recovery strategic plan and scientific information. Some examples of likely actions that the MRRIC will address are identified below:

- Development of a comprehensive adaptive management framework for Missouri River threatened and endangered species that incorporates ongoing and currently planned restoration projects and the implementation of the USFWS 2003 Amended BiOp prepared for the Corps' Missouri River projects.

- Prioritization of a dynamic agenda of recovery actions and opportunities based upon identified recovery needs and available funding;
- Implementation of Species Recovery Plans;
- Preservation, protection and management of cultural resources potentially affected by recovery activities;
- Development of collaborative solutions to conflicts between stakeholders impacted by recovery actions;
- Mitigation of impacts to basin tribes and stakeholders resulting from recovery actions. Mitigation of impacts may include avoidance of impacts when possible, minimization of impacts, and compensation for unavoidable impacts;
- Development of agreed upon and measurable indicators of species response and recovery;
- Development of agreed upon methodologies that link species recovery to overall ecosystem health

The primary focus of the MRRIC will be to provide recommendations to the governmental and non-governmental entities in the basin engaged in recovery actions. It is important to recognize that the MRRIC is not intended to address all issues or concerns within the basin and is limited in its scope – as such, the MRRIC is not proposed as:

- A mechanism to reopen final decisions presented in the Corps' Master Manual and/or the USFWS 2003 Amended BiOp.
- An action implementing entity (implementation will be the responsibility of the acting governmental or non-governmental entity).
- Responsible for actually implementing adaptive management programs; it is proposed to help develop and review processes and the activities associated with such programs, however.
- A peer reviewer of science; although it may make recommendations on peer review processes.
- A management entity (governmental and non-governmental entities will continue to have existing management responsibilities).
- A substitution for government-to-government consultation with tribes.
- A continuation of the 2005 intergovernmental process conducted by the USIECR and their contractor for a spring pulse releases from Gavins Point Dam.
- A mechanism to direct the federal/state/tribal agencies regarding what to do/not do, nor will it waive the sovereignty of any governmental entity or usurp any laws.
- A venue to address issues/concerns occurring in the Mississippi Basin.

5. Authority of the MRRIC – The establishment of the MRRIC will not replace any of the responsibilities, duties, or authorities of the federal agencies in the basin. The FWG views the role of the MRRIC as advisory, i.e., to make recommendations to the governmental and non-governmental entities whose actions may affect Missouri River recovery activities.

While the MRRIC recommendations will be advisory, the federal agencies have committed to fully considering those recommendations. If the federal agencies cannot implement the recommendation, the reasons will be explained to the MRRIC. The FWG's approach to the authority of the MRRIC is consistent with the recommendations of the *Situation Assessment*.

The consensus of interviewees that MRRIC have only advisory and not binding decision making authority over agency policies, projects or implementation measures, should be formally recognized by concerned governmental agencies and all concerned parties involved in the Committee.

Parties have suggested that concerned Federal agencies should make a good faith commitment ... to fully consider implementing the recommendations made by the Committee ... It will be important for the Committee and concerned agencies to discuss whether the agencies will report back to the group if they do not follow recommendations of MRRIC.

Situation Assessment, page 34

E. PROPOSED STEPS FOR ESTABLISHING THE MRRIC

Phased Approach – A phased approach to establishing the MRRIC, as recommended in the *Situation Assessment*, is proposed. The FWG envisions three phases:

- **Phase 1** – The initial phase consists of the drafting of this **Proposed Framework** by the FWG, review and consideration of this document through tribal and public meetings, receipt and incorporation of comments, and preparation of a **Final Framework** document. The draft **Proposed Framework** is envisioned as a “starting point” from which the **Final Framework** will emerge through tribal and public participation. The first phase is anticipated to be completed in mid-November of 2006.
- **Phase 2** – Barring any significant changes to this **Proposed Framework** document, Phase 2 will consist of the convening of the MRRIC Planning Committee and their development of an Initial Charter for the formal MRRIC. The second phase is anticipated to begin in January or early February of 2007.
- **Phase 3** – Convening of the formal MRRIC, anticipated in late fall of 2007.

F. THE MRRIC PLANNING COMMITTEE

1. Proposed Size of the MRRIC Planning Committee – The total size of the MRRIC Planning Committee, including a Chair, is proposed to be approximately 40. A group of this size is proposed to enable the MRRIC Planning Committee to develop an Initial Charter for the formal MRRIC as efficiently and expediently as possible. All basin interest groups may not be individually represented on the Planning Committee. However, all stakeholders will be able to identify committee members who understand and can communicate their interests and concerns.

2. Ex Officio Status of Governmental Entities on the MRRIC Planning Committee – The participating sovereign governmental entities, i.e., the federal agencies, tribes, states, and local governments, are proposed as *ex-officio* members of the MRRIC Planning Committee. They are members by virtue of the fact that they are the designated representatives of sovereign governments.

a. State Governments – Approximately eight state governmental representatives are proposed as members of the Planning Committee. One representative from each of the seven states directly touching the Missouri River, as well as Wyoming, would be included. Internal state differences should be resolved outside of the Planning Committee so that each state speaks with one voice.

b. Federal Agencies – Approximately eight representatives of federal agencies are proposed as members of the Planning Committee.

c. Tribal Governments – There are twenty-eight tribes in the basin and each tribe is welcome to participate. Meetings will be held with the basin tribes to determine how they will participate in the MRRIC Planning Committee process. The number of tribal participants will depend on the input received from these meetings.

d. Local Governments – Local governmental entities, such as municipalities, utilities, or counties, are proposed to be represented by approximately two members of the Planning Committee. The FWG anticipates that common interests may form coalitions to ensure their concerns are represented.

3. Proposed Non-governmental Categories of Membership for the MRRIC Planning Committee – Non-governmental members on the MRRIC Planning Committee would be representative of all major interests in the basin. Where substantial differences in opinion are likely to exist within a category based on upstream (reservoir) or downstream (river) uses, provisions would be made to include members to represent each point of view.

a. Agricultural – Approximately four agricultural members are proposed to represent the varied interests of ranching, floodplain farming, and irrigation users.

Approximately two members may represent upstream interests and two may represent the downstream interests.

b. Environmental / Conservation – Membership for approximately two unspecified environmental or conservation groups is proposed. The FWG anticipates that these groups may form a caucus and coordinate selection of their nominees prior to submitting applications.

c. Navigation / Terminals – The navigation and terminal industries are proposed to be represented by approximately two members.

d. River-focused Community Groups – Groups or organizations with strong community ties to the river are proposed to be represented by approximately two members, potentially one from the upper basin and one from the lower basin.

e. Recreation – Representatives of the recreation industry are proposed to be represented by approximately two members; potentially one from the upper basin and one from the lower basin.. Representatives may include members of organizations that represent fishing, boating, or resort industries.

f. Power – Privately-owned power producers (including thermal power plants that use Missouri River water for cooling), distributors, cooperatives, and consumer groups within the basin that are not considered public entities (representation for public entities is included in the “governmental” category). These groups are proposed to be represented by approximately two members.

g. At-Large – To include representation of broad public interests, approximately two “at-large” members are proposed to be included.

4. Proposal to Appoint Chair of the MRRIC Planning Committee – The MRRIC Planning Committee is proposed to be chaired impartially by a selected individual who is familiar with the issues in the basin but who has no personal stake in the outcome. This person is to be an effective, facilitative leader who has relevant experience with collaborative efforts. Applications, nominations, and selection of a suitable chair may be solicited by the FWG prior to the selection of the MRRIC Planning Committee members. The duties of the Chair are proposed in paragraph 8 of this section, **Proposed Operating Protocols and Ground Rules for the MRRIC Planning Committee**.

5. Proposed Process for Selecting Non-Governmental Representatives – To ensure the quality of the process, the selection of individuals on the Planning Committee will be crucial. Working from the options presented in the *Situation Assessment*, the FWG proposes the following process for selection:

- Through public meetings and other stakeholder communication efforts, the FWG will help recruit and encourage applications from individuals interested in serving on the MRRIC Planning Committee, whose membership should collectively provide balanced and effective representation of the range of interests in the basin.
- Individuals interested in serving on the MRRIC Planning Committee will submit applications to the FWG.
- The FWG will collectively review the applications and will develop a candidate selection list that optimizes stakeholder representation.
- MRBIR will be afforded the opportunity to review the selection process.
- Selected individuals will be notified by the FWG.

6. Process for Selecting Representatives of Governmental Entities – The FWG will provide participating governmental entities (federal, tribal, state, local governments and agencies) with guidance regarding appropriate characteristics for representation on the MRRIC Planning Committee. However, governmental entities will make their own decisions regarding who will represent them in the process.

7. Travel Assistance for the MRRIC Planning Committee Members – To ensure the participation of all interested basin tribes and stakeholders, travel assistance will be made available to those who need it. The ability to pay for travel costs will not be a barrier to participation. A procedure will be established for members of the MRRIC Planning Committee to request assistance and reimbursement of travel expenses – including hotel, mileage, and airfare.

8. Proposed Operating Protocols and Ground Rules for the MRRIC Planning Committee – The intent of these proposed Operating Protocols and Ground Rules is to establish a common set of expectations and mutual agreement about the purpose of the MRRIC Planning Committee, as well as to help ensure efficient use of participants' time in accomplishing the Committee's tasks and reaching agreement on its recommendations. These Operating Protocols and Ground Rules will serve as the MRRIC Planning Committee members' shared commitment to each other about how they will work together.

a. Purpose of the MRRIC Planning Committee – The primary purpose of the Committee will be to develop an Initial Charter for the formal MRRIC. In addition, the MRRIC Planning Committee will have an important role in conducting outreach to the basin and obtaining feedback on the draft Initial Charter.

b. Timeline – It is currently anticipated that the members of the MRRIC Planning Committee will be selected by January 2007, and the first meeting will be convened in February 2007. Monthly face-to-face meetings will take place over a nine-month period. The work of the MRRIC Planning Committee is anticipated to conclude by late fall of 2007.

c. Composition and Structure of the MRRIC Planning Committee – (To be determined. It is proposed that, following incorporation of feedback gained from tribal and public meetings with basin stakeholders, this *Proposed Framework* document will be revised. The revised document will be presented to the MRBIR, which is composed of federal agency executives with programs affecting the Missouri River. After the endorsement of the MRBIR, the *Framework* document will become Final and will be released to the public.)

d. Open Meetings of the MRRIC Planning Committee – All Planning Committee meetings will be announced and open to the public. Observers will be welcome. A limited opportunity for public comment will be provided at each meeting. Meetings of the Planning Committee are meant to focus on collaboratively developing and recommending a draft Initial Charter for the formal MRRIC. As such, the meetings will not be designed to be the primary opportunities for public input. Additional meetings will be conducted later on to solicit public comment and feedback regarding the Committee's recommendations. Interested members of the public who attend and observe the Committee meetings will be encouraged to raise their concerns with Committee members before or after the meetings, as well as during breaks, to help ensure that all issues of significant concern are considered during the Committee's deliberations.

e. Communication and Outreach Role of the MRRIC Planning Committee – Members of the MRRIC Planning Committee will be expected to actively serve as communication channels with their members, colleagues, or constituencies. Interested parties not participating directly on the Committee will be encouraged to convey their concerns and suggestions through individual members of the Committee who they trust to represent their interests. Committee members should expect to make a concerted effort to communicate regularly with their respective constituencies to keep them informed about the MRRIC Charter development process. In addition, Committee members will be expected to participate in public meetings and assist with outreach to other basin stakeholders to seek feedback on their recommendations for the draft Initial Charter of the formal MRRIC.

f. Public Involvement and Information Opportunities – It is anticipated that the sponsoring federal agencies, assisted by the Committee, will offer additional opportunities for the general public and other interested stakeholders to provide input during the MRRIC Charter development process. Specifically, one or more public workshops are anticipated to seek feedback on the Committee's recommendations. In addition, a dedicated website will be established to provide information about the Committee process, which will also provide a mechanism for submitting comments.

g. Decision-Making Rules – The MRRIC Planning Committee will strive to make decisions regarding its recommendations by consensus. In seeking consensus, each member of the Planning Committee will have an obligation to articulate his or her concerns, make constructive proposals, actively listen and consider the suggestions of others, and work together to build agreement.

When unable to support a proposal, a Planning Committee member will have an obligation to demonstrate that the item at issue is a matter of such principle or importance that his or her constituents' interests would be substantially and adversely affected by the proposal. In addition, it will be his or her responsibility to: 1) clearly indicate the reason(s) why they cannot support the proposal; and 2) offer an alternative proposal that satisfactorily addresses not only their concerns, but also those of other members of the Committee, as well.

1. Proposed Definition of Consensus – Making decisions by consensus is a process aimed at finding the highest level of agreement possible without dividing the participants into factions. The proposed definition of consensus for use by the MRRIC Planning Committee is: *Consensus has been achieved when everyone in the group can support, agree to, or accept a particular proposal. In the end, everyone can say, "Whether or not I prefer this proposal, above all others, I will support the decision to recommend it because it was fairly and openly reached and my concerns were given due consideration. I can live with it."*

In seeking consensus on an interim or final recommendation, it is understood that Committee members should voice their concerns with any preliminary proposals along the way, rather than waiting until the end when a final decision is being made on a recommendation. In addition, the Planning Committee members may choose to use the following five levels of agreement to indicate a member's degree of approval and support for any proposal or recommendation being considered by the Committee to determine the degree of consensus among the group:

Level 1 - I feel we have no clear sense of agreement among the group. We need to talk more before considering a decision.

Level 2 - I do not agree with the proposal being considered. I feel the need to block its adoption and propose an alternative proposal.

Level 3 - I may not be especially enthusiastic about it, but I can live with the proposal being considered.

Level 4 - I think this proposal is the best choice of the options available to us.

Level 5 - I am enthusiastic about the proposal being considered and am confident it expresses the best collective wisdom of the entire group.

The goal in reaching a consensus-based recommendation is for all members of the Planning Committee to be at the highest levels of agreement possible. A consensus will be achieved if all Committee members were at Levels 3, 4, or 5. If any member of the Committee is at levels 1 or 2, the decision making process on the contested proposal will stop and the Committee will evaluate how best to proceed.

In the event of significant disagreements and inability to reach consensus on a proposal, the Planning Committee will decide how best to move forward. For example, additional discussion may be warranted to help better understand unresolved concerns before proceeding further, or the Committee might benefit from developing additional options. If the Committee is at an impasse, they could possibly ask the Chair to make a final decision. If forward progress continues to be stymied, the sponsoring federal agencies will make a decision about how to move forward. If, after exhausting all other options, a Committee member feels that he or she cannot live with a proposal that is supported by the rest of the Committee, he or she will have the option to withdraw as a member of the MRRIC Planning Committee.

2. If Consensus Cannot Be Reached on a Final

Recommendation – Members of the MRRIC Planning Committee, with the assistance of the Chair and facilitator, will determine the process for resolving disputes prior to commencing work on the drafting of the Initial Charter.

3. Straw Polls – Straw polls may be taken to assess the degree of preliminary support for an idea, before being submitted as a formal proposal for final consideration by the Planning Committee. Members may indicate only tentative approval for a preliminary proposal, without fully committing to its support until a final version of the proposal is being considered. Assessing level of agreement through use of straw polls is not the same as “voting” and the outcome is not binding on the Committee.

h. Meetings – It is anticipated that the MRRIC Planning Committee will meet on a monthly basis for a nine-month period. The time and location of all Planning Committee meetings will be publicized in advance and the public will be welcome to attend. Meeting schedules and locations will take into consideration the special needs of Committee members so as to maximize attendance and balance out the travel requirements. Committee members will agree to place a

high priority on participation in the MRRIC Planning process and to make a good faith best effort to attend all meetings. If unable to attend a meeting, members will ensure that their designated alternate attends in their place.

Draft Meeting Agendas along with meeting materials will be provided to the Committee at least 5 calendar days in advance of each meeting by the facilitator. The facilitator will produce a meeting summary following each meeting that identifies the major issues discussed and any decisions made or actions to be taken. The meeting summary will not provide detailed documentation of participants' statements, such as with traditional "meeting minutes." The draft meeting summary will be distributed within one week of the meeting's conclusion for review by the participants. Finalized meeting summaries will be posted on the MRRIC web site by the facilitator.

i. Facilitation – The MRRIC Planning Committee process will be provided independent third party facilitation assistance under the auspices of the USIECR. The USIECR will work with the Committee to select a mutually acceptable and appropriately qualified facilitator or facilitation team.

j. Role and Responsibilities of the MRRIC Planning Committee Members – The following points are offered as examples of the recommended roles and responsibilities of members of the Planning Committee:

- Prepare for and attend Planning Committee meetings.
- Actively participate in discussions.
- Raise any process concerns with other members, Chairs or facilitator.
- Share the airtime with others.
- Offer respect of different viewpoints and attention when others speak.
- Ask questions of each other for clarification and mutual understanding.
- Verify assumptions when necessary.
- Avoid characterizing the motives of others.
- Acknowledge and try to understand others' perspectives.
- Deal with differences as problems to be solved, rather than battles to be won.
- Stay focused on the task at hand.
- Refrain from distracting others through side conversations.
- Silence all cell phones and refrain from the use of other wireless communication devices, such as BlackBerrys, during meetings.
- Support the facilitator's independence and neutrality.
- Concentrate on the content of discussions; allow the facilitator to focus on how to promote productive discussion.
- Abide by and support the Operating Protocols and Ground Rules.
- Share responsibility for ensuring success of the process and the quality of the outcome.
- Make your best collective good faith effort to work towards reaching an agreement.

- Represent the perspectives, concerns, and interests of their agency, organization, or constituencies whenever possible to ensure that agreements developed by the Committee are acceptable to those they are representing.
- Keep the Planning Committee informed regarding constraints on their decision-making authority granted by their agencies or constituency groups.

k. Role and Responsibilities of the Chair – The FWG proposes that a Chair or Co-Chairs for the MRRIC Planning Committee be appointed. The responsibilities of the Chair will include:

- Work with the facilitator to develop meeting agendas, in consultation with Committee members.
- Serve as the official spokesperson for the MRRIC Planning Committee process.
- Help keep the Committee focused on addressing its primary purpose.
- Encourage the active participation of all Committee members.
- Keep Committee members accountable for agreed upon tasks and deadlines.
- Assist in building consensus and finding acceptable solutions to disputes or disagreements.
- Support the independence and neutrality of the facilitator.

l. Role and Responsibilities of the Facilitator – The Facilitator functions as a neutral third party whose responsibility it is to impartially serve the entire Planning Committee, help build consensus, provide procedural guidance for efficient task completion and productive working relationships among all members of the Committee. The Facilitator serves at the pleasure of the Planning Committee and can be replaced at any time. Other roles and responsibilities include the following:

- Help the Committee stay focused on their common task.
- Help clarify information and achieve a common understanding of the information being considered.
- Create a constructive environment for open discussion and dialogue.
- Protect individuals and their ideas from attack.
- Help channel strong emotions into productive discussions and solutions.
- Help ensure that all points of view are expressed and understood.
- Help ensure that all members have an opportunity to participate in discussions.
- Clarify areas of agreement and disagreement.
- Suggest processes and procedures to help the Committee accomplish its tasks.
- Help the Committee reach agreement on its recommendations, resolve differences, identify options, and discover common ground.

- Ensure that key decisions are documented.
- Upon request and with guidance from the Committee, draft press releases to be issued through the Chair on the progress of the Planning Committee process.
- Prepare agenda and meeting summaries and keep website updated.

m. Interactions with the Media and External Communications – The Chair of the Committee will serve as the official spokespersons for the MRRIC Planning Committee process. Any press releases or media contact regarding the process or its outcome will be conducted through the Chair, unless other arrangements are made by a consensus of the Committee.

All Committee members will be free to interact with the media, but they agree to focus on explaining the concerns and interests of their own constituencies and avoid characterizing the views or motives of other members of the Committee. Members will be expected to not use the media or broadcast e-mails for communicating concerns about the MRRIC Planning Committee process. Rather, concerns should be addressed through direct communication with the other Committee members, the Chair, and the facilitator. When contacted by the media about the MRRIC process, Committee members will, as a courtesy, provide notice to the Committee about those contacts.

9. Proposed Tasks of the MRRIC Planning Committee – The primary task of the MRRIC Planning Committee will be to develop a draft Initial Charter for the formal MRRIC. The draft Initial Charter will be reviewed by the basin before the MRRIC Planning Committee makes its final recommendations on the Initial Charter. To draft the Initial Charter in an informed manner, the MRRIC Planning Committee will need to learn about other recovery committees, learn about the adaptive management efforts of others, and attend training in collaboration. Other activities that do not further the central goal of developing the draft Initial Charter will not be pursued.

10. The MRRIC Planning Committee Meetings – All meetings of the MRRIC Planning Committee will be open to the public. However, participation of non-members will be restricted as noted in the Operating Protocols section. The FWG envisions that the drafting of the Initial Charter, public feedback process, and finalization of the Initial Charter will take nine months. The MRRIC Planning Committee members should be available to participate in a two-to-three day meeting once a month and one conference call per month.

11. Feedback on Recovery Actions in the Interim – While the MRRIC Planning Committee is focused on developing the Initial Charter for the formal MRRIC, recovery actions in the basin will continue. Federal agencies will continue to provide opportunities for public comment on their activities.

G. FEEDBACK AND COMMENT PROCESS FOR PROPOSED FRAMEWORK DOCUMENT

The FWG has put forward this draft *Proposed Framework for Establishing the Missouri River Recovery Implementation Committee* for the purpose of generating discussion within the basin and with the intent of receiving and incorporating basin feedback. Please note that the proposals contained in this document are just that, proposals. As noted throughout the document and reiterated here, the FWG encourages the reviewers of this document to provide comments at any of the upcoming tribal or public meetings, send e-mail comments to Missouri.Water.Management@nwd02.usace.army.mil, or fax comments to 402-697-2504, prior to the deadline of October 27, 2006.

H. REFERENCES

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FIGURES

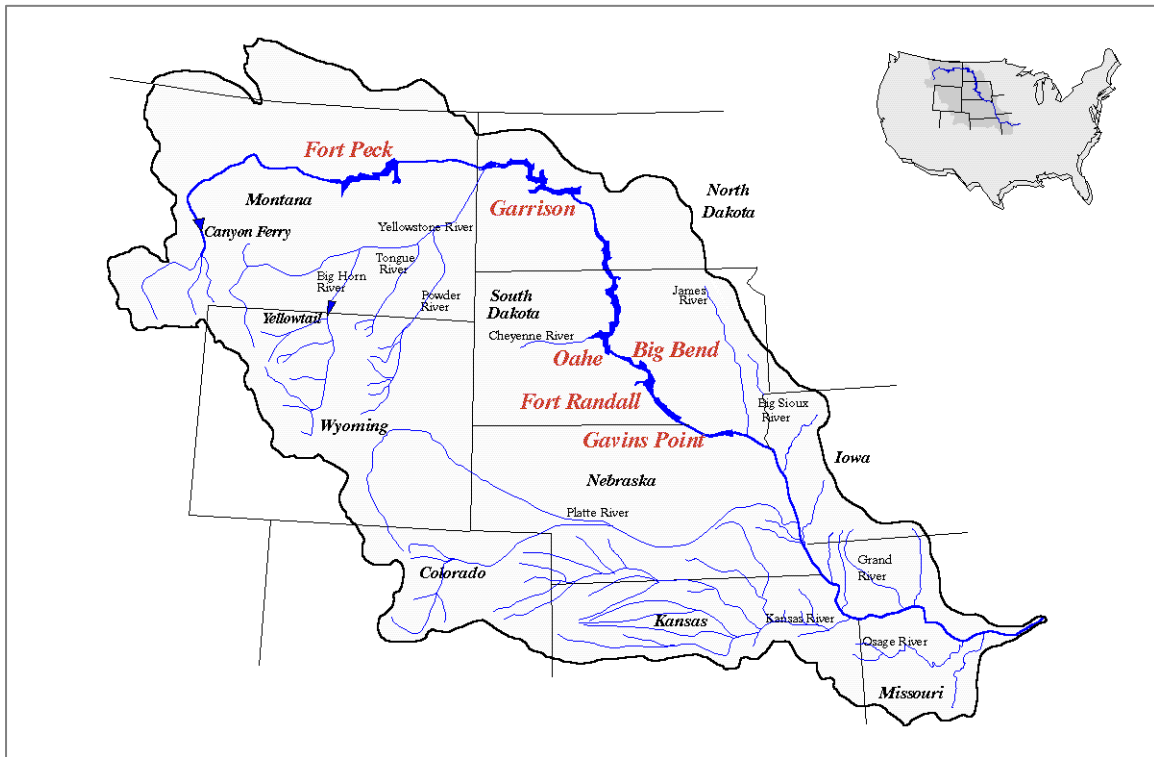


Figure 1 – Missouri River Basin

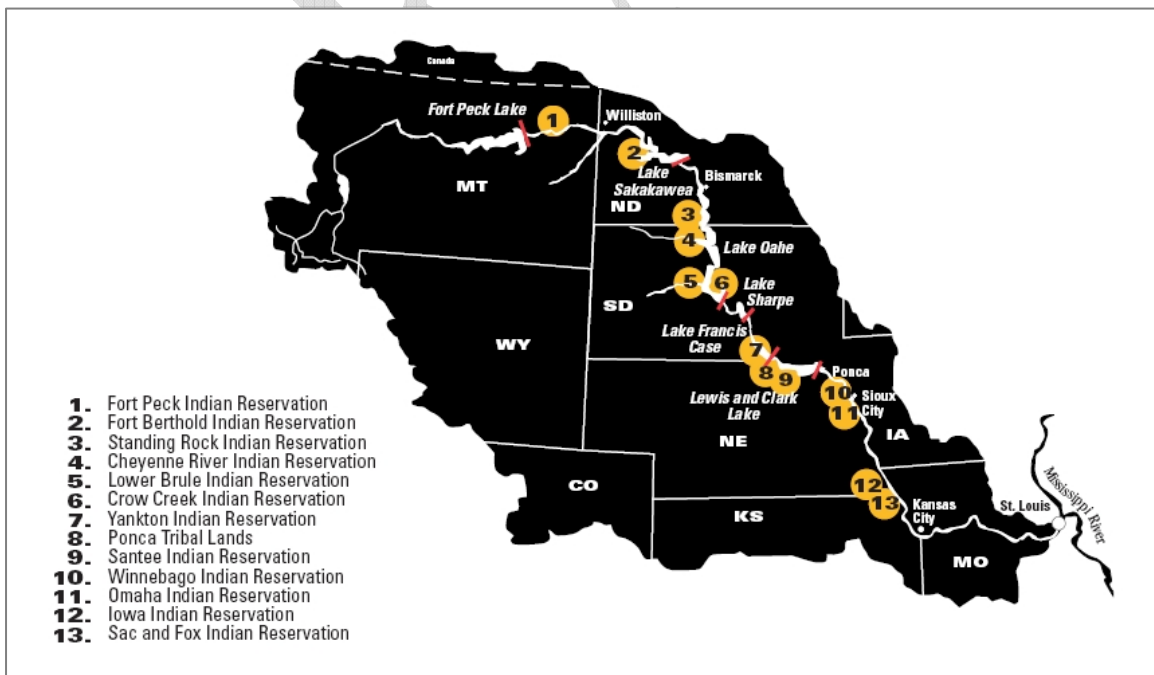


Figure 2 – Missouri River Basin Tribal Reservations

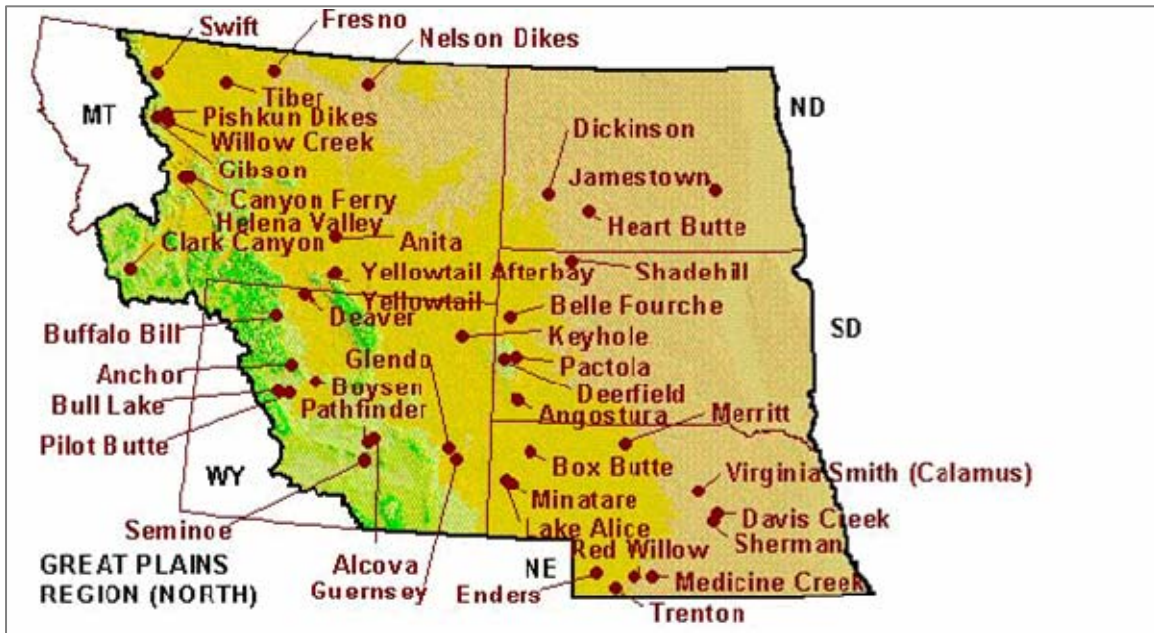


Figure 3 – Bureau of Reclamation Great Plains Region Projects